

Casperson Risk Based Temporary Food Service Legislation

Background

- Constituents raised the question on why temporary food service establishments serving only low risk foods such as ice cream, hot dogs or popcorn must receive an on-site inspection.
- In working with local public health agencies in the UP, they agreed that the on-site inspections are not necessary when the operators serving low-risk food items only have already been through certain interview steps and training through local public health agencies.
- This change will also assist local public health in being able to focus on operations and work where there could be real health issues and save resources and time from having to travel what could be hundreds of miles in the UP to do what may be an unnecessary on-site inspection.
- The language in the attached draft was negotiated with organizations representing local public health agencies (MI Association of Local Public Health) and MDARD. They signed off on this language.

Bill Content

- Allows local public health agencies to waive the on-site inspection for temporary food establishments serving only low-risk foods. The language does not do away with licensing of low risk temporary food service establishments. It retains the licensing, review, consultation and education portion of the Food Law but makes the on-site inspection optional based upon local health department discretion.
- Uses the MDARD terminology for the definition of low-risk foods.
- Exempts food service establishments that serve only low-risk foods from having to have a managerial employee that is certified under the American National Standards Institute. This is already in MDARD policy but local public health agencies suggested it be put into statute for the long-term.

Specific Benefits Include**

- The flexibility for Local Health Departments (LHDs) to assess the risk and choose to educate and license from the office after looking at the menu, operator experience and history of past service. If the determination is made that the operation will be low risk and the operator has sufficient knowledge and experience to safely prepare and serve the proposed menu, then local health departments may choose to forgo an onsite inspection and redirect limited staff resources where they will be much more effective in protecting the public from foodborne illness. This would be done based upon a sound scientific risk assessment.

- It will create a more consistent application of risk based principles which are afforded fixed food service establishments but not temporary food service establishments.
- Currently, on-site fixed food service establishments serving low risk foods such as frozen pizza, and rotisserie hotdogs are only required to be inspected once every 18 months and are not required to have a certified food manager. This is because MDARD recognizes the reduced risk of these foods.
- The above is legal and supported by the Food & Drug Administration (FDA). MDARD and LHDs also permit fixed food service establishments to serve potentially hazardous foods outside of temperature control for as long as 6 hours for cold foods and 4 hours for hot foods. The FDA clearly agrees to this based upon valid scientific research and has stated minimal risk has occurred when foods are outside of required temperatures for these time frames. However, current law and MDARD program requirements mandate that local public health departments perform an on-site inspection of **all** temporary food service
- regardless of food type and length of operation. This includes inspection of temporary almond roasters, hot dog vendors, popcorn vendors, cotton candy vendors, snow cone vendors etc. even if they operate for less than 4 hours.
- There is no strong epidemiological data that demonstrates an increased rate of foodborne illness caused by temporary food service facilities when compared to restaurants, food processing facilities, and other retail food establishments. The MDARD assertion that temporary food service establishments create an increased risk to public health independent of type of food served has not been demonstrated by any scientific data.
- It will facilitate consistency with risk based exemptions currently afforded by the Cottage Food Law.
 - Michigan's Cottage Food Law currently exempts small businesses that produce low risk foods from any and all licensing if they fall below specific income parameters.
 - One example of this is popcorn. An individual can manufacture and package popcorn in their home and sell it to the public with no regulatory oversight under the Cottage Food Law.
 - In contrast, MDARD requires local public health departments to perform an onsite inspection of popcorn vendors operating on a temporary basis.

Furthermore, popcorn and snow cone vendors, etc. are required to possess MDARD licensing and undergo local health department inspections if they operate as a mobile or special transitory food unit.

- Michigan's Cottage Food Law clearly recognizes the reduced risk of certain foods such as popcorn but MDARD currently does not for temporary food events.
- It will reduce the burden to small businesses.
 - Many businesses and members of the public complain about what they consider to be excessive regulation regarding low risk temporary events.
 - Most members of the public recognize the limited risk of serving items like precooked hot dogs, popcorn and hand dipped ice cream at events that are short in duration (typically 4 hours or less).
 - The public generally sees this as an unnecessary hassle that is not well grounded in public health protection and local public health loses both credibility and respect in their community.
- It will improve much needed credibility and respect for local public health amongst the public we serve.
 - When we fail to also recognize the lack of significant risk, as is commonly seen by the public, local public health may, and does, experience a lack of credibility that can affect other, more significant efforts.

****Prepared by Marquette County Local Health Department**

